

NO. 49706-9-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

CLAY LEE HALTOM,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
CLALLAM COUNTY, STATE OF WASHINGTON
Superior Court No. 07-1-00066-5

BRIEF OF RESPONDENT

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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether the trial court erred by entering an order for restitution without statutory authority when the order was entered after the expiration of the 180 day statutory time limit but the record shows Haltom agreed to pay restitution as part of a plea agreement and, at sentencing, agreed that restitution would be in excess of \$11,000.00?
2. Whether Haltom failed to establish an extraordinary circumstance justifying late notice to appeal the restitution order because he was bound by his agreement to pay restitution as part of his plea bargain and he never objected to the amount?

II. STATEMENT OF THE CASE

On March 22, 2007, the appellant, Clayton Haltom, pleaded guilty to Possessing Stolen Property in the First Degree under Clallam County Superior Court cause no. 07-1-00066-5. CP 43-50; State's Ex. 1.¹ On that same day, under cause 07-1-00020-7, Haltom pleaded guilty to 2 counts of Possession of Stolen Property in the First Degree and Unlawful Possession of a Firearm in the First Degree. State's Ex. 17. As part of the plea agreement, the State agreed to dismiss cause no. 07-1-00027-4 and counts 2 and 4 under

¹ State's Exhibits 1-20 were filed with this Court under cause 49750-6-II on July 24, 2017 prior to consolidation with cause 49706-9-II.

cause 07-1-00020-7. RP 5, 13, 18, (3/22/2007) McAneny; RP 23 (6/28/2007) McAneny; State's Ex. 2.

The Statement of Defendant on Plea of Guilty refers to an attached global plea offer. CP 46. The global plea offer was filed with the trial court a day before the change of plea hearing on Mar. 21, 2007. State's Ex. 2. This document includes a cooperation agreement and is entitled "Global Resolution Plea Offer/Agreement." *Id.*; RP 4 (3/22/17) McAneny. The global plea agreement covered the three separate cause numbers mentioned above, 07-1-00066-5, 07-1-00020-7, and 07-1-00027-4. State's Ex. 2. The plea agreement expressly requires Haltom to be responsible for restitution:

The Defendant agrees to pay restitution to victims of uncharged crimes contained in the discovery or as otherwise stated: The Defendant agrees to pay restitution in such sums as shall be negotiated between the parties herein. The Prosecution understands, that as a practicable matter, restitution shall be very hard to determine, in any sort of manner which is fair and equitable to the numerous victims of crime.

State's Ex. 2 at 5.

On June 28, 2007, Haltom was sentenced for the charges he pleaded guilty to under both causes 07-1-00020-7 and 07-1-00066-5 pursuant to the global plea agreement. State's Ex 2 at 5 of 6; CP 31–42, State's Ex. 3, Ex. 18. The State honored its part of the bargain and dismissed cause no. 07-1-00027-4 and counts 2 and 4 under cause 07-1-00020-7. RP 23 (6/28/2007) McAneny.

The prosecutor crossed out the specific restitution amount of \$11,083.00 written in the judgment and sentence under cause 07-1-00066-5 due to a desire to gain personal knowledge of how the number was generated. CP 34; RP 25–26 (6/28/2007). Then the prosecutor stated for the record that Haltom should expect the number of \$11,000 to come around again before moving on to the rest of the recommended legal financial obligations. RP 26 (6/28/2007) McAneny.

Haltom’s attorney confirmed on the record that Haltom agreed to the terms of the plea agreement laid out by the State. RP 25 (6/28/2007) McAneny. Then after the prosecution indicated for the record that restitution would eventually come back around to something “in excess of \$11,000.00,” and finished with the rest of the agreed recommendation, Haltom’s attorney, Mr. Black, reaffirmed on the record that such was the understanding of the parties. RP 22, 26–27 (6/28/2007) McAneny.

Both judgments under causes 07-1-00066-5 and 07-1-00020-7 order that restitution to specified victims shall be paid to the clerk of the court, but a restitution hearing date was set on Oct. 5, 2007. CP 34–35; State’s Ex. 3 at 4–5; State’s Ex. 18 at 5–6; RP 31–32 (6/28/2007) McAneny.

The parties discussed whether Haltom was going to waive his appearance at the restitution hearing. RP 34–35 (6/28/2007) McAneny. Haltom’s attorney Mr. Black stated on the record that he did not want

Haltom's treatment to be interfered with and the Court asked Haltom if he would give his permission to the Court to put down Haltom's initials waiving his appearance at any restitution hearing. RP 35 (6/28/2007) McAneny. Haltom replied, "Yes, you do." *Id.* Haltom's initials appear on page 12, paragraph 5.4, waiving the right to be present at any restitution hearing under cause 07-1-00020-7 but his initials were not added to cause 07-1-00066-5. CP 35; State's Ex. 3 at 10, and State's Ex. 18 at 11. As to cause 07-1-00066-5, Mr. Black indicated at the restitution hearing dated Jan. 18, 2008, that Haltom waived his right to be present. RP 5 (1/18/2008) Wooldridge.

On Oct. 5, 2007, the restitution hearing was set over to Oct. 25, 2007 because Mr. Black was not available. State's Ex. 4. On Oct. 25, 2007, both parties agreed to continue the restitution hearing because the State's counsel was not available. State's Ex. 5. The restitution hearing was set over to Nov. 15, 2007. *Id.* On Nov. 15, 2007, the record reflects that information, presumably about restitution, was provided to Haltom but Mr. Black had not heard back from Haltom who was in-custody serving his prison sentence at Airway Heights Corrections Center. State's Ex. 6, 7. The restitution hearing was then set over to Nov. 29, 2007. State's Ex. 6.

The minutes from Nov. 29, 2007 show that an agreement on restitution was reached in the amount of \$14,334.66 on cause no. 07-1-00020-7 and Mr. Black was prepared to sign the restitution order although he

objected on Haltom's behalf. RP 43–44 (11/29/2007) McAneny; State's Ex.

8. The prosecutor stated that he and Mr. Black "agreed to strike one of the amounts that was requested, and [they] have arrived at an agreed figure of \$14,334.66 on this matter." RP 44 (11/29/2007) McAneny. An order for restitution for cause 07-1-00020-7 was signed by all parties and Haltom's counsel signed the order "Copy received, approved for entry notice of presentation waived." State's Ex.19. Mr. Black, through written correspondence, discussed the restitution with his client and reiterated his client's objection to the court as follows:

Your Honor, I have received – as you know, I wrote Mr. Haltom and sent him a copy of the restitution that's been requested. I did receive a letter back from him. He does not agree with it. He says he's still confused, he doesn't understand how he can be charged restitution on a possession of stolen property case. I'm not quite -- I'm not certain what he means by that, but, you know, I've reviewed the restitution with Mr. Jay and the State and it -- you know, that is what it is. I don't have -- I was not -- I didn't -- was not given any information from Mr. Haltom to -- that I could argue as far as a witness, he just said if he bought the stolen truck, why would he be charged the restitution. Well, I think if he had the stolen truck, he's required to pay the restitution on it. So, on that matter, you know, I've -- I think I'm prepared to sign off on it if the judge is -- if the Court is going to require that, so.

RP 44 (11/29/2007) McAneny.

The trial court then inquired about the truck mentioned by counsel and the amounts of restitution for the various victims. RP 46–48 (11/29/2007) McAneny. The trial court then asked defense counsel:

THE COURT: Okay. And, Mr. Black, you indicated that your client has not authorized you to agree to this?

MR. BLACK: That's correct.

THE COURT: But you have no real argument against the numbers being entered?

MR. BLACK: That's it, Your Honor.

RP 48 (11/29/2007) McAneny.

As for restitution for cause 07-1-00066-5, the prosecution withdrew its submittal of the restitution order in order to talk more with the victims about fair market values. RP 43, 48–49 (11/29/2007) McAneny. The court stated that restitution for 07-1-00066-5 would be re-noted after the prosecutor reiterated that he has reserved entry of the restitution order until after he worked more with the victims. RP 49 (11/29/2007) McAneny.

Eventually, a restitution order was entered on Jan. 18, 2008 in the same \$11,083.00 amount which was crossed out in the judgment and sentence on June 28, 2007. CP 29, 34; State's Ex. 11.

The record from the trial court minutes on Jan. 18, 2008 shows that Haltom's attorney, Mr. Black, entered an objection to the order for restitution in the amount of \$11,083.00 on the basis that Haltom did not believe that he owed any restitution. State's Ex. 11.

[MS. KELLY:] Secondly, the State does have a restitution order, has supplied the documentation to Mr. Black. And based upon the conversations that he and the deputy who had been handling this, Mr. John Jay, I believe he's prepared to sign the order at this time, although he knows that his client will object. It's not that the documentation doesn't support it, it's just that his client –

MR. BLACK: That's correct, Your Honor. He has waived his presence, he's serving a DOSA sentence right now. He's objected to the restitution, he doesn't believe he owes any.

THE COURT: Uh-huh, well, that's apparently not an appropriate objection. So, I'll sign the restitution order.

RP 44–45 (1/18/2008) filed by Lisa McAneny; *see also* RP 5 (1/18/2008) filed by Tammy Wooldridge.

Mr. Black signed the restitution order indicating that a copy was received approved, and notice of presentation was waived. CP 29.

On Aug. 26, 2016, over 8 years later, the trial court signed an order under cause no. 07-1-00066-5 for Haltom to show cause why he failed to comply with the court's Order Setting Restitution. State's Ex. 10. The order to show cause was presented by the State along with the restitution order and Haltom's payment history attached. *Id.* On Oct. 19, 2016, Haltom filed an Objection to the Restitution Order, a Motion to Vacate Restitution Order, and Response to Order to Show Cause. State's Ex. 12.

Haltom moved to vacate the restitution order under cause no. 07-1-00066-5 on the basis that: 1) he did not waive his presence for a restitution hearing and the order was entered without his authorization, and 2) the order was entered over his objection and the court did not provide notice of right to appeal, and 3) the order was entered more than 180 days after sentencing without a finding by the trial court that there was good cause to continue the

restitution hearing beyond the 180 day period. *Id.*

On Nov. 15, 2016, a hearing was held on the motion to vacate the restitution order and the trial court denied the motion. CP 16, State's Ex. 13 and 14. On Nov. 23, 2016, Haltom filed a notice of appeal to appeal the trial court's denial of the motion to vacate the restitution order. CP 15, State's Ex. 15.

On Dec. 27, 2016, Haltom also filed, in the Court of Appeals under cause 49750-6-II, a motion to enlarge time to file a notice of appeal to appeal the entry of the restitution order dated Jan. 18, 2008. Haltom argued in his brief that he was entitled to file a late notice of appeal because extraordinary circumstances prevented him from filing a timely appeal. Haltom asserted that the extraordinary circumstance was that Haltom was never advised of his right to appeal and the State could not show that he waived his right to appeal. The State responded and objected on the basis that the record was not sufficient to review Haltom's claim of extraordinary circumstances. The State moved that the case be remanded to the trial court for a reference hearing to develop a record as to this issue.

The Court of Appeals remanded the case for a reference hearing and a hearing was held on May 17, 2017 in which the transcripts of proceedings from 2007 and 2008, marked as State's Ex. 20, were admitted along with the court records which were marked as State's Exhibits 1–19.

This Court eventually ruled that based upon the trial court's findings of fact and conclusions of law, that there was no record showing Haltom was provided notice of his right to appeal the restitution order and granted Haltom's motion to file a late notice of appeal.

On appeal, Haltom argues that the restitution order is void because the court entered the order after the statutory 180 day time limit had expired and counsel failed to object which denied Haltom effective assistance of counsel.

III. ARGUMENT

A. \$11,000.00 OF THE TOTAL RESTITUTION ORDER AMOUNT WAS DETERMINED AND AGREED AT SENTENCING BEFORE THE 180 DAY EXPIRATION PERIOD AND HALTOM IS BOUND BY HIS AGREEMENT.

"When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days except as provided in subsection (7) of this section." RCW 9.94A.753(1).

Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property In addition, restitution shall be ordered . . . if the offender pleads guilty to . . . fewer offenses *and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.*

RCW 9.94A.753(5) (emphasis added); *State v. Hunsicker*, 129 Wn.2d 554, 558, 919 P.2d 79 (1996)(citing former RCW 9.94A.142(2)).

"Plea agreements which are intelligently and voluntarily made, with

an understanding of the consequences, are accepted, encouraged and enforced in Washington.” *In re PRP of Breedlove*, 138 Wn.2d 298, 310, 979 P.2d 417 (1999) (citing *State v. Perkins*, 108 Wn.2d 212, 216, 737 P.2d 250 (1987)). Plea agreements “are regarded and interpreted as contracts and both parties are bound by the terms of a valid plea agreement.” *Breedlove*, 138 Wn.2d at 309 (citing *State v. Talley*, 134 Wn.2d 176, 182, 949 P.2d 358 (1998); *State v. Wakefield*, 130 Wn.2d 464, 480, 925 P.2d 183 (1996)).

In *State v. Hunsicker*, the Court found that the defendant was bound by his agreement to pay the restitution amount stated in the certificate of probable cause as part of the plea agreement. *State v. Hunsicker*, 129 Wn.2d 554, 559–60, 919 P.2d 79 (1996). The *Hunsicker* Court noted that, unlike in *State v. Krall*, “the defendant reached a plea agreement with the State promising to pay restitution . . . in exchange for the State’s agreement to drop several counts.” *Hunsicker*, 129 Wn.2d at 558 (distinguishing *State v. Krall*, 125 Wn.2d 146, 881 P.2d 1040 (1994)).

Additionally, the judgment and sentence in *Krall* did not set restitution, but provided that if the State sought restitution, it “ ‘shall be by motion and hearing.’ ” *Krall*, 125 Wash.2d at 148, 881 P.2d 1040. In contrast, Hunsicker signed a plea agreement which stated that he “is to pay full restitution reflected in the Certification for Determining probable cause....” CP at 15. That document listed an exact amount, \$1,800. Likewise, Hunsicker’s statement of defendant on plea of guilty provided that he would pay restitution for all counts, charged and uncharged, in exchange for the State’s agreement to dismiss numerous counts.

Id.

The *Hunsicker* Court upheld the restitution order because Hunsicker was bound by his agreement to pay restitution and the restitution *amount* was determined before the expiration of the statutory time limit although the restitution order was not entered until a year and a half after sentencing. *Hunsicker*, 129 Wn.2d at 561–62.

Here, as in *Hunsicker*, Haltom entered a binding agreement to pay restitution and the agreed amount was determined to be at least “in excess of \$11,000” at sentencing before the expiration of the 180 statutory time limit to determine the restitution amount. RP 26–27 (6/28/2007) McAneny.

Haltom agreed in the plea agreement on March 22, 2007 to be responsible for restitution and for uncharged crimes and the plea agreement was incorporated by reference in Haltom’s signed Statement of Plea of Guilty, both of which were filed with the court. State’s Ex. 1 and 2. The State honored its part of the bargain and dismissed cause no. 07-1-00027-4 and counts 2 and 4 under cause 07-1-00020-7. RP 23 (6/28/2007) McAneny.

At sentencing on June 28, 2007, the prosecutor asked the court for permission to cross out the pre-written restitution amount of \$11,083.00 written in the judgment and sentence due to a good faith desire to gain personal knowledge of how the number was generated from the victims. CP 34; RP 25–26 (6/28/2007) McAneny. Then the prosecutor stated for the

record that Haltom should expect the figure “something in excess of \$11,000” to come around again before moving on to the rest of the recommended legal financial obligations. RP 26 (6/28/2007) McAneny. Haltom’s attorney confirmed with the trial court on the record that this was the understanding of the parties. RP 27 (6/28/2007) McAneny. Thus, the parties agreed as part of the plea bargain and at sentencing before the expiration of 180 days that the amount of restitution would be “something in excess of \$11,000.” RP 26 (3/28/2007) McAneny. The trial court followed the recommendations as laid out by the parties. RP 31 (6/28/2007) McAneny.

Therefore, as in *Hunsicker*, the Court should affirm the restitution order in at least the \$11,000.00 amount because Haltom was bound by his promise to pay restitution as part of the plea agreement and the amount of at least \$11,000.00 was determined by agreement of the parties at sentencing.

B. LACK OF NOTICE OF RIGHT TO APPEAL THE RESTITUTION ORDER AFTER HALTOM OBJECTED TO RESTITUTION ON THE BASIS THAT HE DID NOT OWE ANY WAS NOT AN EXTRAORDINARY CIRCUMSTANCE JUSTIFYING A LATE NOTICE OF APPEAL BECAUSE HALTOM WAS BOUND BY HIS PRIOR AGREEMENT TO PAY RESTITUTION AS PART OF THE PLEA AGREEMENT.²

Haltom waived his right to appeal the restitution order because he was bound by his agreement to pay restitution and he did not object to the restitution amount. Haltom was bound to his agreement to be responsible for at least the \$11,000.00 amount payable to Danny and Lenette Kendrick determined at sentencing. Even on Jan. 18, 2008, Haltom did not object to the restitution amount. Haltom's objection was that he didn't own *any*.

Had Haltom raised a valid objection to the restitution *amount*, then the trial court would have held an evidentiary hearing, made findings, ordered restitution accordingly, and then provided Haltom notice of his right to appeal. However, Haltom did not object to the restitution amount. His only objection was that he did not owe restitution *at all*.

Therefore, there was no basis to provide Haltom with notice of a right to appeal the restitution order on that objection and the alleged failure to do so was not an extraordinary circumstance justifying a late notice of appeal

² On July 26, 2017, this Court issued a ruling granting the motion to file a late notice of appeal stating: "Moreover, any argument as to whether the terms of Haltom's plea agreement preclude all or part of his appeal is better addressed by the State in merits briefing, after

under RAP 18.8(b).

The appellate court will only in *extraordinary circumstances and to prevent a gross miscarriage of justice* extend the time within which a party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration. The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section. The motion to extend time is determined by the appellate court to which the untimely notice, motion or petition is directed.

RAP 18.8(b) (emphasis added).

Haltom, by accepting the State's plea offer and the benefit of the bargain, expressly agreed to pay restitution as part of his plea agreement and his attorney reaffirmed the agreement at the sentencing hearing. State's Ex. 2 at 5; RP 26–27 (6/28/2007) McAneny. *See State v. Woods*, 90 Wn. App. 904, 908, 953 P.2d 834 (1998) (quoting *State v. Miszak*, 69 Wn. App. 426, 429, 848 P.2d 1329 (1993) (“Accordingly, restitution for loss beyond the scope of the crime charged is properly awardable only when the defendant enters into an ‘express agreement’ to make such restitution as part of the plea bargain process.”)).

Haltom entered the plea bargain agreement freely, voluntarily, and intelligently. *See* RP 4–15 (3/22/2007) McAneny. The trial court sentenced the defendant in accordance with the agreed recommendations of the parties.

Haltom has fully presented his issues for review.”

RP 25–26, 30–31 (6/28/2007) McAneny.

Therefore, Haltom was bound by his agreement with the State to pay restitution and his later objection to paying *any* restitution after the fact is invalid. *See State v. Hunsicker*, 129 Wn.2d 554, 559–62, 919 P.2d 79 (1996).

Because Haltom was bound by his agreement to pay restitution, he waived any right to appeal an order for restitution on the claim that he doesn't owe any. *See Hunsicker*, 129 Wn.2d at 559 (citing *State v. Miller*, 110 Wn.2d 528, 536, 756 P.2d 122 (1988)) (“Washington courts have recognized that a plea agreement is in the nature of a contract. *E.g.*, *State v. Hall*, 104 Wn.2d 486, 490, 706 P.2d 1074 (1985). “The court has referred to the plea agreement as a ‘*binding agreement between the defendant and the State*’ once a plea is accepted by the trial court.”(emphasis added)); *see also Washington Asphalt Co. v. Harold Kaeser Co.*, 51 Wn.2d 89, 91, 316 P.2d 126 (1957) (citing *Winton Motor Carriage Co. v. Blomberg*, 84 Wash. 451, 457, 147 P. 21 (1915)) (“A judgment by consent or stipulation of the parties is construed as a contract between them embodying the terms of the judgment. It excuses all prior errors and operates to end all controversy between the parties, within the scope of the judgment. In the absence of fraud, mistake, or want of jurisdiction, *a judgment by consent will not be reviewed on appeal.*” (emphasis added)).

There is a significant distinction between challenging the accuracy of the restitution amount on one hand, and on the other, completely reneging on an express agreement to be responsible for restitution by later claiming none is owed at all. Haltom never objected to the “excess of \$11,000” restitution amount cited and affirmed as agreement between the parties (RP 26–27) nor the final \$11,083 amount on the restitution order. Haltom simply completely reneged on his agreement to be responsible for restitution.

“When restitution is ordered, a trial court determining the amount of restitution may either rely on a defendant's admission or acknowledgment of the amount of restitution or it may determine the amount by a preponderance of evidence.” *Hunsicker*, 129 Wn.2d at 558–59 (citing *State v. Ryan*, 78 Wn. App. 758, 761, 899 P.2d 825 (1995)).

Failure to object to the restitution amount constitutes acknowledgment or agreement to the amount. *State v. Ryan*, 78 Wn. App. 758, 762, 899 P.2d 825 (1995) (citing *State v. Pockert*, 53 Wn. App. 491, 498, 768 P.2d 504 (1989); *State v. Tindal*, 50 Wn. App. 401, 403, 748 P.2d 695 (1988)). If the defendant acknowledges or agrees to the amount of restitution, an evidentiary restitution hearing is not required. *State v. Pockert*, 53 Wn. App. 491, 498, 768 P.2d 504 (1989).

Here, Haltom was bound by his agreement to pay restitution and he never objected to the amounts of the restitution which constitutes an

agreement to the amount. *Ryan*, 174 Wn.2d 925–26. At sentencing, Haltom’s attorney confirmed that it was the understanding of the parties that restitution would be in excess of \$11,000. On Jan. 18, 2008, when Mr. Black signed the restitution order, Haltom’s only objection was to having to pay any restitution at all. Mr. Black affirmed that prosecutor Ms. Kelly was correct in regards to the anticipated character of the objection to restitution in general:

[MS. KELLY:] Secondly, the State does have a restitution order, has supplied the documentation to Mr. Black. And based upon the conversations that he and the deputy who had been handling this, Mr. John Jay, I believe he's prepared to sign the order at this time, although he knows that his client will object. *It's not that the documentation doesn't support it, it's just that his client –*

MR. BLACK: *That's correct*, Your Honor. *He has waived his presence*, he's serving a DOSA sentence right now. *He's objected to the restitution, he doesn't believe he owes any.*

THE COURT: Uh-huh, well, that's apparently not an appropriate objection. So, I'll sign the restitution order.

RP 45 (1/18/2008) McAneny.

Had Haltom objected to the restitution *amount* then the court would have held an evidentiary hearing, made findings, ordered restitution, and then advised Haltom of his right to appeal. *See State v. Gray*, 174 Wn.2d 920, 925–26, 280 P.3d 1110 (2012) (citing *Ryan*, 78 Wn. App. at 761–63) (“If an offender objects to the restitution amount, the court must hold a hearing and accurately determine the amount within the allotted time.”).

There was no evidentiary hearing here because Haltom did not object to the restitution amount. Haltom's counsel agreed with the prosecutor that his client did not have a dispute against the documentation supporting the restitution or the numbers. RP 5 (1/18/2008) Wooldridge; RP 44-45 (1/18/2008) McAneny. Rather, Haltom made a blanket objection to the entire \$11,083.00 restitution amount on the basis that he did not believe he owed *any at all. Id.*

This was practically the same pattern of objection by Haltom before entry of the restitution order in cause 07-1-00020-7 on Nov. 29, 2007 over Haltom's blanket objection:

Your Honor, I have received -- as you know, I wrote Mr. Haltom and sent him a copy of the restitution that's been requested. I did receive a letter back from him. He does not agree with it. *He says he's still confused, he doesn't understand how he can be charged restitution on a possession of stolen property case.* I'm not quite -- I'm not certain what he means by that, but, you know, I've reviewed the restitution with Mr. Jay and the State and it -- you know, that is what it is. I don't have -- *I was not -- I didn't -- was not given any information from Mr. Haltom to -- that I could argue as far as a witness,* he just said if he bought the stolen truck, why would he be charged the restitution. Well, I think if he had the stolen truck, he's required to pay the restitution on it. So, on that matter, you know, I've -- I think I'm prepared to sign off on it if the judge is -- if the Court is going to require that, so.

RP 44 (11/29/2007) McAneny.

The court then inquired about restitution discussing the amounts of restitution to the various victims. RP at 46-47 (11/29/2007) McAneny. The

trial court then asked defense counsel:

THE COURT: Okay. And, Mr. Black, you indicated that your client has not authorized you to agree to this?

MR. BLACK: That's correct.

THE COURT: *But you have no real argument against the numbers being entered?*

MR. BLACK: *That's it, Your Honor.*

RP at 48 (11/29/2007) McAneny.

Here, just as in cause 07-1-00020-7, Haltom made a blanket objection to paying restitution at all although Haltom was already bound by the plea agreement to pay restitution and the agreement of the parties at sentencing that restitution would be at least \$11,000. Thus, on Jan. 18, 2008, the trial court noted that Haltom's objection to paying any restitution at all was not appropriate. RP 5 (1/18/2008) Wooldridge.

Haltom's failure to object to the restitution *amount* constituted acknowledgment or agreement to the amount rendering an evidentiary hearing superfluous. *See Ryan*, 78 Wn. App. at 762; *Hunsicker*, 129 Wn.2d at 559. Therefore, the restitution order was effectively a judgment by consent and was not appealable. In this situation there was no requirement that Haltom be advised of a right to appeal the restitution order. *See Washington Asphalt Co.*, 51 Wn.2d at 91.

Therefore, the alleged failure to advise Haltom of a right to appeal the restitution order entered over his objection on the basis that he did not owe

any was not an extraordinary circumstance justifying a late notice of appeal. *See* RAP 18.8(b). For all the foregoing reasons, the Court should dismiss Haltom's appeal as untimely.

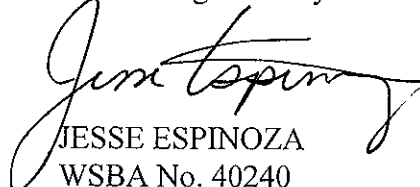
IV. CONCLUSION

Haltom was bound by the plea agreement to pay restitution and to pay an amount of at least \$11,000 which was determined by agreement at sentencing before the expiration of 180 days. Moreover, Haltom never objected to the restitution amount even when the restitution order was entered. Therefore, Haltom waived his right to appeal restitution by entering this agreement and there was no need for his counsel or the court to inform Haltom he had a right to appeal the restitution order. There were no extraordinary circumstances justifying a late notice of appeal.

Therefore, the Court should dismiss the appeal as untimely or affirm the restitution order in the amount of \$11,000.00 in the alternative.

Respectfully submitted this 3rd day of October, 2017.

MARK B. NICHOLS
Prosecuting Attorney

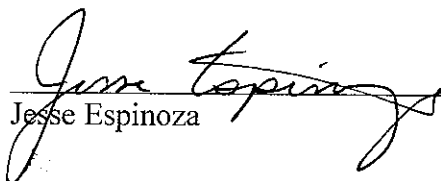


JESSE ESPINOZA
WSBA No. 40240
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

Jesse Espinoza, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically or mailed to Lila J. Silverstein on October 3, 2017.

MARK B. NICHOLS, Prosecutor


Jesse Espinoza

CLALLAM COUNTY PROSECUTING ATTORNEY'S OFFICE

October 03, 2017 - 2:50 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 49706-9
Appellate Court Case Title: State of Washington, Respondent v. Clay L. Haltom, Appellant
Superior Court Case Number: 07-1-00066-5

The following documents have been uploaded:

- 7-497069_Briefs_20171003144900D2385925_4866.pdf
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Briefs - Respondents
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